# EXHIBIT E - PART 3

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# - Donald Smith -

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know, looking into the issue. But as far as where we are at right now, we still have more work to do on the issue. But again, I'm not going to speculate on what we found.

So you're saying that Captain Q. McNamara is still looking into it now a year and two months later?

> MR. KLEINBERG: Objection.

- It's still a part of the overall Α. issues that we are looking into, yes ma'am.
- Do you know what specifically Q. McNamara has done from November of '06 to now to look into this issue?
- I know -- I believe he's talked to the Commission of Correction. I don't know if he's spoken to any other people about this.
- Did you ever receive any feedback Q. from him that he did anything other than talk to a member or employee of the Commission?
- We have had a number of conversations on this but, again, it's an open issue.
- So specifically McNamara didn't tell you that he did anything other than speak

62 - Donald Smith -1 with the Commission? 2 MR. KLEINBERG: I object, 3 just to the extent this is apparently an 4 ongoing investigation. 5 Did you ever ask Pat Perry to do 6 Q. anything about this? 7 I don't recall. 8 Do you recall at any point in time Q. 9 asking Pat Perry to investigate the anonymous 10 letter? 11 I could have. I could have. And I 12 Α. don't have a specific memory, but that would be 13 something that -- that would be something that I 14 could have done. 15 You don't recall one way or the 0. 16 other? 17 I don't recall, because there 18 are -- there are so many issues that we deal 19 with every day. You know, and many of them are 20 issues that don't have substance, but I still 21 like to get them looked into. But I don't know 22 specifically if I had Pat Perry look into this 23 or not, but I could have. 24 So to date did anybody ever tell 25 Q.

1	- Donald Smith -	63
2	you, either McNamara, Perry, anyone else, that	
3	anybody within the facility was questioned about	
4	this claim that a procedure was put out sometime	
5	right before the Commission came to the	
6	facility?	
7	A. I don't recall.	
8	Q. Do you recall receiving anything in	
9	writing from Perry with respect to his	
10	investigation of the anonymous complaint or	
11	letter?	
12	A. I don't recall.	
.13	Q. Did you ever see Exhibit 18?	
14	A. I believe this is the document that	
15	we are talking about.	
16	Q. That's the procedure that you	
17	believe was referenced in the anonymous letter	
18	of November 2006?	
19	A. Yes. And I also believe I've seen	
20	it in the depositions. But I believe I've seen	
21	it in conversations with Captain McNamara. And	
22	again, I don't know if I asked Pat Perry to look	
23	into this or not.	
24	Q. And in terms of, just so the record	
25	is clear, the conversations that you had with	

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Q.

1	- Donald Smith -	64
2	McNamara about Exhibit 18, did those relate to	
3	the anonymous allegations that this procedure	
4	was put out sometime right before the Commission	
5	came to the facility?	
6	A. That's exactly what it would be	
7	about. In other words, the bottom line is we	
8	want to make sure that all parties be treated	
9	fairly. And, you know, if this had been put out	
10	at a certain date, we want to know when it was	
11	put out.	
12	Q. In terms of procedures, these are	
13	kept in the facility?	
14	A. Yes.	
15	Q. Are these the procedures that	
16	LeFever would have the authority to issue under	
17	the goal of implementing the broader policies	
18	that are set forth?	
19	A. Yes.	
20	Q. And is the broader policy what, for	
21	example, we have marked as Exhibit 2?	
22	A. Yes, that's a broader policy. And	
23	again, as I said earlier, I think that's a	
24	pretty specific policy.	

In terms of the procedure that's

1	- Donald Smith -	55
2	before us as Exhibit 18, did you at any point in	
3	time have any role in drafting or modifying it?	
4	A. NO.	
5	Q. Other than LeFever, do you know if	
6	anybody else had any role in that?	
7	A. I don't know.	
8	Q. In terms of the amendment,	
9	specifically the date of amendment February 23,	
10	2006, it's in the shaded box, you see that?	
11	A. Yes.	
12	Q. But then it also has an effective	
13	date of August 12, 2005. Do you see that?	
14	A. I see that.	
15	Q. Do you have any understanding as to	
16	what the difference is between those two?	
17	A. I don't understand it.	
18	Q. On the second page of the document,	
19	bottom section under 15-Minute Supervisory	
20	Visit, letter H, 15-minute supervisory visits	
21	are not, underlined, adequate as a suicide	
22	prevention precaution. Do you see that?	
23	A. Yes.	
24	Q. Did you ever ask anybody prior to	
25	this case, the depositions in this case, as to	

1	- Donald Smith -	56
2	when, if at all, that procedure was put out?	
3	A. No. I do not believe 15-minute	
4	supervisory visits are ever, ever adequate for a	
5	suicide a suicidal prisoner.	
6	Q. I understand that's what you	
7	believe. But do you know when the first time	
8	was that that was put in writing as part of the	
9	procedure in the jail?	
10	A. I don't.	
11	Q. Do you know as you sit here today	
12	when Exhibit 18 in its current form was ever	
13	issued, meaning placed in a procedure book or	
14	given to a correction officer?	
15	A. I don't know.	
16	Q. Is that something that you say is	
17	still under review?	
18	A. Yes.	
19	Q. In terms of that section, letter H	
20	which I just read, and you indicated your belief	
21	that 15-minute supervisory visits are never	
22	adequate as a suicide prevention precaution,	
23	correct?	
24	A. Yes.	
25	Q. You have any understanding as to	

1	- Donald Smith -	67
2	why that was put in writing if in fact the	
3	practices or policies in Putnam County,	
4	according to you, always indicated constant	
5	watch was required?	
6	A. I don't know. I don't know if the	
7	Commission had put something out or what	
8	motivated the captain to put this in the	
9	procedure, I don't know.	
10	Q. You never asked Captain LeFever,	
11	correct?	
12	A. Not yet.	
13	MS. BERG: Can we take a few	
14	minutes?	
15	MR. KLEINBERG: Sure.	
16	(Recess held.)	
17	Q. Going back to Exhibit 2, turn to	
18	the page that says 79 at the bottom.	
19	A. Yes.	
20	Q. Top of the page, "tour supervisor	
21	will," you see that?	
22	A. Yes.	
23	Q. Then it says, "assure that constant	
24	supervision is immediately provided for the	
25	following types of prisoners. One, suicidal	
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1	- Donald Smith -	68
2	prisoners," correct?	
3	A. Yes.	
4	Q. The term suicidal prisoner is not	
5	defined in there, correct?	
6	A. It's not defined in the paragraph.	
7	Q. or anywhere in this policy?	
8	MR. KLEINBERG: Objection.	
9	A. I don't recall. I can look at the	
10	whole policy, but	
11	Q. That's all right, the policy speaks	
12	for itself.	
13	A. But I do believe I do believe	
14	that suicidal you know, the whole purpose of	
15	eight hours of training in the basic course and	
16	four hours in the facility is to ensure that	
17	people understand, you know, why we do the	
18	training and what the training is all about. So	
19	I believe that, you know, it's clear what's	
20	expected.	
21	Q. In terms of what's expected of the	
22	tour supervisor, it doesn't say here that he or	
23	she will institute constant supervision if a	
24	score is eight or higher on the form, correct?	
25	MR. KLEINBERG: In this	

paragraph or this page?

MS. BERG: Well, what the tour supervisor will do. That's what this section is.

- A. The whole purpose of that screening form is to identify inmates who are suicidal or who have a tendency to have a suicidal issue.

  And the bottom line is -- I mean it's pretty specific, that the tour supervisor will implement constant supervision.
- Q. In terms of being suicidal, is it your understanding that if the score is eight or higher they are considered to be suicidal?
  - A. Yes.
- Q. Or if a shaded box is checked, they are considered to be suicidal?
- A. Under the guidelines from the Commission of Correction and the Office of Mental Health and the training. And when we're talking about suicidal, we are talking about as best that the screening process can identify, they have the potential for suicide. And then a psychiatrist, only a psychiatrist or a mental health professional can take them off of a

70 - Donald Smith -1 constant watch. 2 Did you ever come to learn at any 0. 3 point in time that correction staff 4 differentiated between somebody who is suicidal 5 and somebody who scored eight or higher on the 6 form? 7 objection. MR. KLEINBERG: 8 objection. MR. RANDAZZO: 9 Only from these depositions I have Α. 10 heard some discussions in this room. 11 Did you ever see any written policy 12 Q. which specifically says, constant supervision 13 must be implemented if a score on the suicide 14 screening form is eight or higher? 15 I believe it's in the training. Α. 16 But did you ever see any written 17 0. policy or procedure which in Putnam County says, 18 if the score is eight or higher institute 19 constant watch? 20 It's not on the form. It's not on 21 the form itself. 22 It's not in the policies or 23 0. procedures that you have seen, correct? 24 MR. KLEINBERG: Objection. 25

#### - Donald Smith -1 But that's why the correction Α. 2 officer, the booking officer is notifying --3 Just answer my question, please. Q. 4 My question is, have you ever seen 5 that written in a policy or procedure, that you? 6 must institute constant watch if the score is 7 eight or higher? 8 MR. KLEINBERG: Objection. 9 In a policy or procedure, not in Α. 10 training? 11 Correct, that's my question. 12 0. I can't recall as I sit here where Α. 13 I could just point to one right now. 14 In terms of "tour supervisor will, Q. 15 Section C, assure that active supervision is 16 immediately provided for prisoners who are 17 intoxicated by drugs or alcohol but who do not 18 appear to be a danger to themselves or others." 19 First, active supervision, that's the 15-minute 20 21 Yes. Α. 22 0. 23

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checks that you talked about earlier? In terms of those who do not appear to be a danger to themselves or others, is that somebody who scored lower than eight on the form or didn't have a shaded box checked?

- constant watch, a constant watch is used always for people who are suicidal or could cause a danger to themselves. They could not be suicidal, but they could cause a danger to themselves by injuring themselves or their physical condition would cause them to be a danger to themselves.
- next page in terms of safety of inmate with mental health problems, number 3 under letter A. "The captain or staff sergeant shall consult with the responsible physician or his designee prior to the following actions being taken regarding prisoners who are having mental health problems." You see that?
  - A. Yes, I see that.
- Q. In terms of those who have mental health problems, would that include somebody who scores eight or higher on the suicide screening form?
- A. I believe anyone who scores eight or higher on the suicide form is going to be

Correction and from the National Commission on

Correctional Health Care, I believe anyone can make a referral.

- Q. Do you know in terms of individuals who come into the facility and have a score of eight or higher or a shaded box checked on the suicide screening form of any policies or practices which require a mental health referral be made for those individuals?
- A. Every -- in practice everyone who scores eight or higher is referred to mental health, because they are going to be on a constant watch, and only -- only a mental health professional can take them off of the constant watch.
- Q. But do you know of any written policies or procedures which say that if somebody scores eight or higher or a shaded box is checked on that form that they are required to be referred to mental health?

MR. KLEINBERG: Objection.

- A. I can't specifically identify a written procedure, but I believe that is happening as a matter of practice.
  - Q. what do you base your belief on?

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- A. On the fact that anyone, anyone who scores in the suicidal category is going to automatically be referred to mental health.
  - O. What do you base that on?
- A. The constant watch, they can't be taken off the constant watch. Only the mental health staff can take them off the constant watch.
- Q. Other than the fact that they can't be taken off a constant watch, how do you know that in practice mental health referrals are made for those individuals who are considered suicidal or at high risk of suicide, do you have personal knowledge of that?
- A. I believe I recall, and I don't have a specific recollection of where it is but I almost -- I believe that in the National Commission of Correctional Health Care standards I believe -- I believe a referral is made.
- Q. Are those NCIC standards made available to correction staff?
- A. Specifically are they handed out to correction staff, I don't believe so.
  - Q. So do you know of anything in

services?

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That is correct. And I also Α. believe that in the -- I believe that -- that is a part of the National Commission of

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Correctional Health Care standards, which again is part of -- part of -- you know, what we sought with our medical care was to go from a situation where we literally had time periods -when I arrived at the Putnam County Sheriff's Office and Correctional Facility in 2002, we had a situation where we had one nurse on staff and we had one part-time practical nurse that would assist her. And we had a situation where if she was sick or it was a long weekend or she was on vacation, the facility could go five days up to seven days with no medical staff in the jail, where correction officers would be handing out -- dispensing -- they were blister packs, but would be dispensing medications to the inmates, where individuals would be coming in the jail in all types of conditions 24 hours a day, 7 days a week with no medical, no medical staff in the jail.

Q. I don't want to cut you off, but I don't think your answer is addressing my question. My question was, are you aware of any programs, procedures, policies which provide for detoxing of inmates who come into the facility

using drugs or alcohol. You referenced one being the request for proposal.

- A. Right, and that's the point I want to make. The whole idea -- the whole idea of getting a medical going from limited medical support in the jail to having 24 hour medical coverage in the jail, for when people come in to ensure the 14-day physicals are done. They weren't being done. That was a step that I took as the sheriff to get --
- Q. I understand you took that step, but do you know of anything that was actually implemented?
  - A. Absolutely. That was --
  - O. Just in terms of detoxing, though?
- A. Detox, and we have had many success stories on detoxification in the jail.
- Q. So what's the program that's in place then?
- A. The program is in place, is through Americor. And they have -- they have done -- in most cases that I've seen they have done an outstanding job with detoxification, with follow-up treatment in spite of what may have

#### - Donald Smith -

responsibility -- they have a responsibility for the supervision of the inmate. And they provide that responsibility under general supervision, active supervision or constant supervision. And with that supervision there are certain responsibilities. These correction officers are trained. They go through basic training, they go through continuous training in the facility. They are trained to, if they see an inmate in distress, to contact the nursing staff. That's why the nursing staff is there. We have 24-hour-a-day medical support on call. In addition to the nurse on staff, the doctor is on call. Dr. Asif, the psychiatrist is on call.

And I can just -- Miss Berg, I can tell you of many success stories where this system has worked impeccably where the doctor, the psychiatrist, the nurse and the correction staff have worked together. Our correction facility -- in spite of being here at this deposition, our correctional facility has an outstanding reputation in New York State.

Q. You indicated, though, the correction staff has a responsibility to contact

## - Donald Smith -

nursing if an inmate is in distress. Did you ever come to learn that at some point inmates who are withdrawing from drugs or alcohol may not necessarily exhibit signs or symptoms of withdrawal for a period of time?

- A. Well, withdrawal will occur based on the substance you are withdrawing from -- obviously, believe it or not, alcohol can cause more serious withdrawal problems than drugs.
  - Q. How do you know that?
- A. I know that because I read, I'm a professional.
  - Q. Did you --

A. My staff is -- you know, this -- you know, being a correction officer is a profession.

The other point I want to make with you is that I'm the Sheriff of the county. I mean I have a broad array of responsibilities.

I have a jail administrator who has been on staff for more than 25 years. He attends numerous training sessions. I have training officers who attend numerous training sessions.

Lieutenant O'Malley is a highly respected

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#### - Donald Smith -

training officer in the State of New York. My undersheriff, Peter Convery, has over 30 years of correctional experience. Pat Perry, the inspector general, was the warden of Riker's Island. I mean, I just -- I just want you to know that we have put in place -- we have put -- in spite of putting a microscope on something that may have not gone the right way, the Putnam County Correctional Facility is a professional place that is well respected in New York State.

Q. With all due respect, I don't think you need a microscope to figure out what went wrong here. And that being said, I'm going to move to strike his answer as not being responsive.

MR. KLEINBERG: Can we take

a two-minute break?

MS. BERG: Sure.

## (Recess held.)

Q. Are you aware of anything that is in a written policy or procedure which provides for monitoring of inmates who come into the facility not actively withdrawing but who have the risk of progressing to that level?

A. Again, I'm the Sheriff of the county and, you know, I put out broad policies. And I strongly believe that we have in place the proper screening process conducted by the booking officers with referrals to our medical staff. And you know, I really believe that when we went from this part-time medical staff in the jail, we put the final piece in place where we had correction officers who were trained to do the booking, to do the initial intake as well as the 14-day physical. And as I sit here today I strongly believe that we have an active detox program in place. And --

- Q. Who administers the program, is it AmeriCor?
- A. You know, that's a hard question to give you just a short answer, because again I strongly believe that it's the total team. In other words, the booking officer does the initial medical intake, and that's in accordance with the Commission of Correction. And then there's a referral, that information is given to the nurse who is on staff. And that is reviewed and the nurse normally within an hour comes up

and actually talks to the inmate. We've now implemented the vitals, we have added that to the program. So it's a total team effort.

when it comes to the detoxification, that is a medical issue. But I just can't say it's isolated from correction officers, because correction officers are trained as to when people are in distress and when they need to get medical staff. And it's been a godsend to have 24-hour medical coverage in the jail. And, you know, without going off track, I'm going to focus on --

- Q. Can I just say in terms of the short answer, that the medical staff and the correction staff both have a responsibility when it comes to inmates withdrawing from drugs or alcohol?
- A. That's exactly what I'm -- I'm trying to say that. I'm trying to say that.
- Q. Can I show you Exhibit 26, which is a progress note pertaining to Spencer?
  - A. Yes.
  - Q. Have you ever seen that before?
  - A. I've seen that I believe -- I

1	- Donald Smith - 85	
2	believe I've seen that in these depositions.	
3	Q. Prior to the depositions in this	
4	case?	
5	A. No, it may have been it may have	
6	been in the packet sent to the Commission of	
7	Correction. But, you know, again there were a	
8	lot of documents and I don't recall.	
9	Q. In that progress note Peter Clarke	
LO	indicates will monitor. You see that?	
11	A. Yes.	
12	Q. Did you ever ask anybody what that	
1.3	meant?	
L4	A. No.	
L5	Q. Do you know if any monitoring was	
L6	done of Spencer Sinkov?	
L7	A. I know the correction officer was	
L8	monitoring his status.	
L9	Q. Every 15 minutes?	
20	A. Every 15 minutes and perhaps even	
21	more. But as far as you know, I can't speak	
22	for I can't speak for Peter Clarke.	
23	Q. Did you ever ask the correction	
24	staff who was responsible for doing the	
25	15-minute check anything about whether they	

	Ponald Smith - 87
1	- Donaid Smith
2	there were a number of conversations.
3	Q. Did you ever speak with Peter
4	clarke?
5	A. No.
6	Q. To your knowledge was Peter Clarke
7	ever questioned by the investigators when they
8	investigated the death of Spencer?
9	A. I don't recall.
10	Q. Did you ever speak with Susan
11	Waters?
12	A. About this, I don't recall.
13	Q. Did you ever speak with Kevin Duffy
14	about Spencer Sinkov or the circumstances
15	concerning his intake and death?
16	A. Yes.
17	Q. How many times?
18	A. I've spoken to Kevin a number of
19	times about suicide prevention, about this case
20	after it happened, and we still speak about
21	procedures within the jail. You know, we try to
22	improve the quality of services, you know, on a
23	monthly basis
24	Q. When
25	A in the jail. And one of the

things I specifically remember, I specifically remember having a discussion with Kevin on the issue of, you know, vital signs. Vital signs are not required under the National Commission of Correctional Health Care standards or any written standard within the Commission. And I specifically said, well listen, Kevin, we have the staff here. I'm proud of the staff. Let's just do it. And the Commission recommends it, let's just do it. I mean...

- Q. That would have been after Spencer's death then?
  - A. Yes.

- Q. Prior to Spencer's death did you ever have any conversations with Kevin Duffy about suicide prevention in the correctional facility?
  - A. I'm sure.
  - Q. Do you recall?
- A. One of the -- one of the -- one of the -- well, maybe several discussions. One of the concerns I had after the suicide in November of 2003 was the issue of mental health -- mental health coverage in the jail. And to get better

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## - Donald Smith -

mental health coverage and more responsive coverage and 24-hour-a-day on-call coverage when I know I specifically talked to Kevin about that. And I know there was a point in time where I talked to Kevin about increasing the hours for the licensed clinical social worker in the jail. We initially established it, when we provided the mental health coverage I think we started with 12 hours. And that was one of the first discussions we had, was the actual taking over of the mental health coverage in the jail because we were not satisfied with the previous coverage. And then, of course, to increase the coverage to 40 hours because -this is a challenge for jails all across New York State and the country. Mental health issues are more prevalent than ever before.

Q. In terms of your conversations, though, with Kevin Duffy, other than about increasing coverage, meaning having a psychiatrist on call 24 hours a day, increasing the hours for the clinical social worker, did you ever talk to him specifically about any suicide prevention policies or procedures?

1	- Donald Smith -	90
2	A. If I'm not mistaken, Kevin Duffy	
3	spent a day or two with us doing a study on	
4	suicide prevention.	
5	Q. When was that?	
6	A. I want to say it was in September	
7	of 2006. I may not be correct on the date.	
8	Q. But when you say Duffy spent a day	
9	or two with us, who do you mean?	
10	A. I'm talking about a project team.	
11	I'm talking about a	
12	Q. Who was that?	
13	A. I'm talking about an expert on the	
14	subject that I received I received support	
15	from the I'm trying to get the proper name.	
16	The National it's an organization where	
17	Virginia Hutchinson and I'm sorry, the	
18	National Institute of Corrections.	
19	Q. Who is the expert that	
20	participated?	
21	A. The expert who participated was	
22	Miss Judith Cox.	
23	Q. who else participated?	
24	A. We brought in a number of people	
25	from the community. People from organizations	